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July 17, 2000

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445-12th Street, SW TWA325
Washington, D.C. 20554

Re: Petition for Rulemaking for New DTV Channel
Hibbing, MN

Dear Ms. Salas:

Tendered herewith, on behalf of Duluth-Superior Area Educational Television Corporation ("Duluth"), licensee of noncommercial educational television Station WDSE-TV, Duluth, Minnesota, and applicant for a new NTSC television station to operate on Channel 18 in Hibbing, Minnesota, are an original and four copies of a Petition for Rulemaking seeking addition of new reserved DTV Channel 31 to Hibbing. If and when this Petition is granted, Duluth will amend its pending application for Hibbing to specify operation on reserved DTV Channel 31.

This petition is tendered pursuant to the filing window announced by the Commission by public notices dated November 22, 1999 ("*Mass Media Bureau Announces Window Filing Opportunity for Certain Pending Applications and Allotment Petitions for New Analog TV Stations*", DA 99-2605) and March 9, 2000 ("*Window Filing Opportunity for Certain Pending Applications and Allotment Petitions for New Analog TV Stations Extended to July 15, 2000*", DA 00-536).

Kindly direct inquiries and copies of correspondence concerning this transmission to Theodore Frank of this law firm, at Telephone 202-942-5790, or to the undersigned.

Sincerely,



Marcia Cranberg

Attachments

No. of Copies rec'd 0+4
List ABCDE

Before the
Federal Communications Commission
Washington, DC 20554

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JUL 17 2000

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the matter of:)
)
Addition of DTV Channel Allotment)
for Hibbing, Minnesota)

TO: Mass Media Bureau

**PETITION FOR RULEMAKING TO ADD
DTV CHANNEL ALLOTMENT FOR HIBBING, MINNESOTA**

Duluth-Superior Area Educational Television Corporation ("Duluth"), licensee of noncommercial educational television Station WDSE-TV, Duluth, Minnesota, and applicant to construct a new noncommercial educational NTSC television station to operate on Channel 18 in Hibbing, Minnesota, by its attorneys, hereby requests that the Commission initiate proceedings to amend Section 73.622 of its Rules and Appendix B to its *Second Memorandum Opinion and Order on Reconsideration of the Fifth and Sixth Reports and Orders* in MM Docket No. 87-268 ("Second Reconsideration Order") to allocate DTV Channel 31 as a reserved digital noncommercial television channel for Hibbing.

This Petition is being submitted pursuant to the filing window announced by the Commission by public notices dated November 22, 1999 ("*Mass Media Bureau Announces Window Filing Opportunity for Certain Pending Applications and Allotment Petitions for New Analog TV Stations*", DA 99-2605) and March 9, 2000 ("*Window Filing Opportunity for Certain Pending Applications and Allotment Petitions for New*

Analog TV Stations Extended to July 15, 2000", DA 00-536) (hereafter, "November 22, 1999 or March 9, 2000 Public Notices").

DTV Channel 51 has previously been allocated by the Commission for noncommercial educational use in Hibbing but has not been assigned to any existing NTSC television licensee. Accordingly, Duluth is this date submitting an amendment to its pending Channel 18 application for Hibbing to specify DTV operation on Channel 51. If and when this Petition for addition of Channel 31 is granted, Duluth will again amend its pending Hibbing application to specify Channel 31 rather than 51.

BACKGROUND AND ELIGIBILITY FOR FILING

Duluth's existing noncommercial educational Station WDSE-TV, Channel 8, Duluth, is the closest noncommercial, educational television station to Hibbing. However, the WDSE Grade B contour falls short of Hibbing and surrounding remote areas of northern Minnesota. Consequently, on September 20, 1996 Duluth filed an application for a new noncommercial educational NTSC television station to operate on Channel 18 in Hibbing. The proposal would have allowed the first ever noncommercial educational Grade B or better coverage to what is popularly called the Minnesota Iron Range, including approximately 52,000 persons.

By letter dated October 7, 1996 (1800E1-SA) the Video Services Division of the Mass Media Bureau returned the Channel 18 Hibbing application as unacceptable for filing because it proposed service within "Freeze Areas" designated by the Commission's Order in *Advanced Television Systems*, Mimeo No. 4074 (rel. July 17, 1987) ("Freeze Order") and erroneously failed to include a request for waiver of the freeze. Duluth was

not afforded an opportunity before the Bureau returned the application to submit a corrective amendment so that it could include a formal freeze waiver request.

On November 6, 1996 Duluth filed a Petition for Reconsideration or, In the Alternative, Waiver of the Cut-Off For Filing NTSC Television Applications And Request for a Waiver of the ATV Freeze (“Duluth Reconsideration Request”). The Duluth Reconsideration Request argued that the Bureau had erred in failing to afford Duluth an opportunity to amend its application to seek a waiver of the freeze and, in the alternative, requested waiver of the cut-off rules to permit re-filing of the application with an appropriate freeze waiver request. The Duluth Reconsideration Request has never been acted upon and remains pending.¹

The Commission thereafter allocated noncommercial educational DTV Channel 18 to Bemidji, Minnesota, precluding its use in nearby Hibbing. *See Second Reconsideration Order* at Appendix B. At the same time, presumably in order to accommodate the effort to bring an initial public television service to Hibbing, the Commission created a new Hibbing noncommercial educational allocation on Channel 51. That allocation remains open.

The current filing window affords an opportunity for the submission of petitions for rulemaking seeking a new channel by entities with pending applications for new full-service NTSC television stations on Channels 2-59 which propose locations inside of the designated “TV Freeze Areas” and which are not now grantable because of conflicts with

¹ The application presented a strong case for waiver of the freeze – it was only very slightly short-spaced to Minneapolis and St. Paul; it would have furthered Commission and Congressional policies favoring universal public television service by providing a

Footnote continued on next page

DTV allocations. *November 22, 1999 Public Notice* at 1. The window also permits the submission of amendments to pending Freeze Area NTSC applications to specify DTV operation. *Id.*

Duluth may submit this Petition during the current filing window. Duluth's original NTSC Channel 18 application for Hibbing should still be considered to be pending under applicable Commission precedent because following the return of the application by the Commission, Duluth timely filed a Petition for Reconsideration and the Petition for Reconsideration is pending. The Commission has repeatedly stated in a variety of contexts that a broadcast application is still pending through resolution of all applicable appeals. For example, for purposes of the amendment requirements of Section 1.65 of the Rules, an application is "'pending' before the Commission from the time it is accepted for filing by the Commission until a Commission grant or denial of the application is no longer subject to reconsideration by the Commission or to review by any court." 47 C.F.R. §1.65(a).² Even without this analysis, however, once the Petition for Reconsideration is ultimately granted, the Duluth application will be deemed to have been continuously pending since its file date. "[G]rant of [applicant's] petition for

Footnote continued from previous page

first-ever public television service to remote rural areas of northern Minnesota; and grant would not have adversely affected the Commission's assignment of DTV allotments.

² See also, *In re Application of Premier Broadcasting, Inc. for a Construction Permit for a New FM Station on Channel 225A (Montecito, CA)*, *Memorandum Opinion and Order*, 7 FCC Rcd. 867, ¶5 (1992) (for purposes of the inconsistent application rules, "we see no relevant distinction between applications which have been returned and are on appeal and other types of pending applications..."); Section 73.3525(h) (an application is "pending" for purposes of settlement until a "grant or denial of that application is no longer subject to reconsideration or judicial review".)

reconsideration returned its application to ‘pending and undecided’ status nunc pro tunc its original file date....” Premier Broadcasting, supra at ¶5.

DISCUSSION

Channel 31 is a preferable allocation for Hibbing because the current allocation for Hibbing, Channel 51, will ultimately be at the top of the DTV “core” of channels and could cause interference to other authorized services on Channels 52 and above. Moreover, as a lower channel, Channel 31 has superior transmission capabilities to Channel 51. An operation on Channel 51 would require approximately twice the power to attain the same signal strength as an operation on Channel 31. In addition, Duluth is discussing with the licensee of Station WIRT-DT, Channel 36, Hibbing, plans to use a common tower and antenna for DTV operations. The spectral spacing between Channel 31 and the WIRT-DT transmitter (30 MHz) will simplify antenna design as compared to the 90 MHz spread between Channels 36 and 51. Finally, the proximity “on the dial” of Channel 31 to Hibbing Channel 36 (WIRT-DT) will make it easier for Hibbing residents to locate and access their two local stations.

As shown in the attached Engineering Statement by John F.X. Browne and Associates, P.C., Duluth’s pending application for Channel 18 in Hibbing cannot be granted because of the conflicting DTV allocation for Channel 18 in Bemidji. The proposed Channel 31 would be in compliance with the requirements of Section 73.622(a) of the Rules and would protect DTV and NTSC stations by meeting the engineering criteria of Section 73.623(c) of the Rules without any allowance for de minimis interference. See November 22, 1999 Public Notice at 4-5. The Petition conforms to all pertinent legal and technical requirements, including pertinent criteria for interference

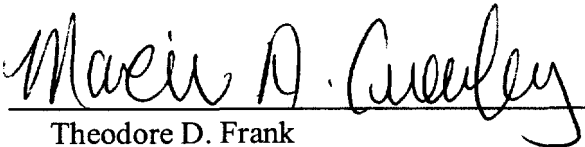
protection to NTSC and DTV services, including facilities eligible for Class A protection. If and when the Commission grants this Petition and issues an Order amending the table of DTV allotments to include noncommercial Channel 31 in Hibbing, Duluth will submit an amendment to its pending Hibbing application to specify Channel 31.

Attached hereto, pursuant to Section 1.401(d) of the rules, is a draft Notice of Proposed Rulemaking for use by the Commission in connection with this Petition.

WHEREFORE, Duluth-Superior Area Educational Television Corporation respectfully requests that this Petition be granted and a Notice of Proposed Rulemaking be issued proposing addition of new reserved noncommercial educational DTV Channel 31 in Hibbing, Minnesota.

Respectfully submitted,

DULUTH-SUPERIOR AREA EDUCATIONAL
TELEVISION CORPORATION

By: 

Theodore D. Frank
Marcia A. Cranberg
Arnold & Porter
555 12th Street, N.W.
Washington, DC 20036

(202) 942-5790

July 17, 2000



Engineering Statement
in support of
Petition for Rule Making
to Allot
Channel *31
to
Hibbing, MN

The Duluth Superior Educational Television Corporation (DSE), licensee of WDSE-TV, a non-commercial television broadcast station at Duluth, MN, is an applicant for a vacant reserved Channel 18 at Hibbing, MN.

Channel 18 is no longer usable for NTSC purposes as the result of the channel allotments made in conjunction with the Commission's DTV proceeding because of interference to the DTV allotment of KAWE-DT on Channel 18 some 121 km distant. The Commission deferred processing applications such as the DSE filing during the pendency of the DTV proceeding.

In its public notice of December, 1999 (DA 99-2605) the Commission invited similarly situated applicants to file corrective amendments to eliminate interference by a change in operating parameters or petitioning for a new channel; specification of DTV operation instead of NTSC is permissible.

A digital operation on Channel 18 would cause interference to KQDS-DT and KBJR-DT on adjacent channels (17 / 19, respectively) at Duluth as well as to KAWE-DT at Bemidji on Channel 18.



A study has been conducted to identify a suitable replacement channel for Channel 18. Channel 31 meets all requirements for DTV operations assuming the following:

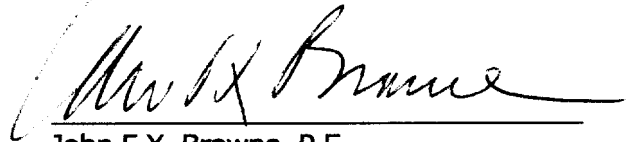
Channel:	31
Power:	500 kW max. average
Antenna:	Directional (see Exhibit I)
Antenna Height:	643 m (RC AMSL)
HAAT:	210 m

Exhibit II summarizes the interference scenario using these parameters. No interference would be caused to any broadcast station.

It is noted that there would be potential interference to a translator / LPTV station K29EB at Hibbing operating on Channel 29, a "taboo" relationship. This facility is not entitled to Class A protection but would be eligible for a new channel under the Commission's displacement rules. A cursory analysis indicates that several channels would be available to this licensee.

Certification

This statement with associated exhibits was prepared by me or under my direction. All assertions contained in the statement are true of my own personal knowledge except where otherwise indicated and these latter assertions are based on information from sources known to be reliable and are believed to be true.



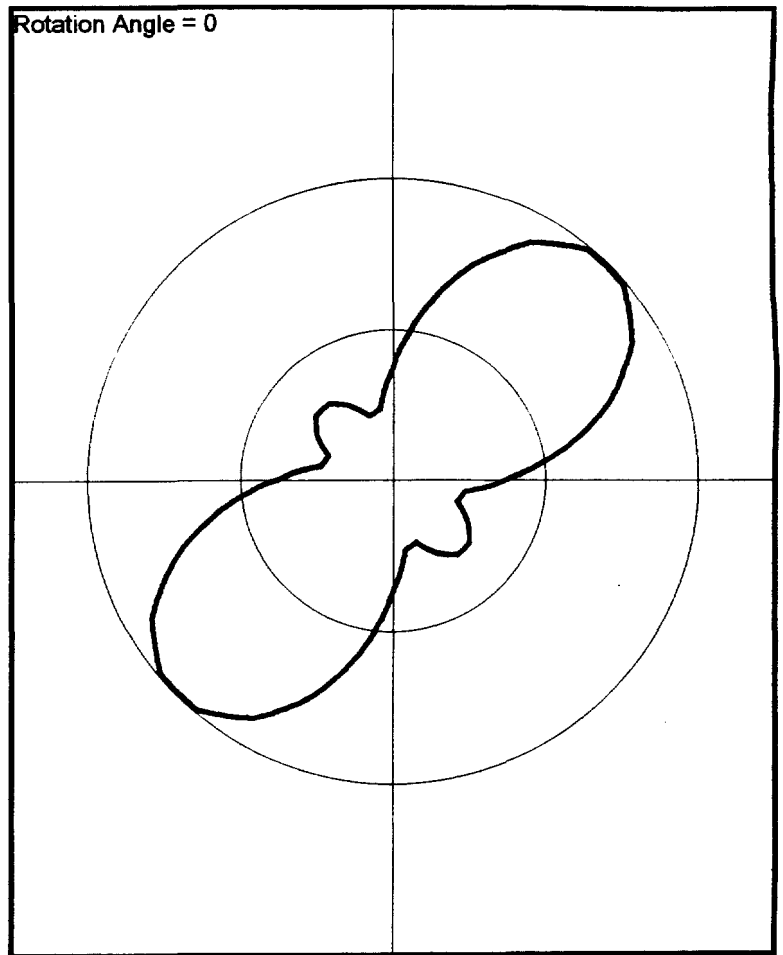
John F.X. Browne, P.E.
July 13, 2000

Attachments: Exhibit I
Exhibit II

Antenna Pattern

Pre-Rotation Antenna Pattern....

Azimuth (deg)	Effective Field
0.0	0.370
10.0	0.566
20.0	0.756
30.0	0.906
40.0	0.989
50.0	0.989
60.0	0.906
70.0	0.756
80.0	0.566
90.0	0.374
100.0	0.237
110.0	0.223
120.0	0.283
130.0	0.327
140.0	0.327
150.0	0.283
160.0	0.223
170.0	0.237
180.0	0.374
190.0	0.566
200.0	0.756
210.0	0.906
220.0	0.989
230.0	0.989
240.0	0.906
250.0	0.756
260.0	0.566
270.0	0.374
280.0	0.237
290.0	0.223
300.0	0.283
310.0	0.327
320.0	0.327
330.0	0.283
340.0	0.223
350.0	0.237



John F.X. Browne & Associates PC

wdse hib31 (31) hibbing, mn
TV Outgoing Interference Study
Signal Resolution: 2 km
Consider NTSC Taboo: Yes
KWX error points are considered to
be interference free coverage.
Masked interference points are being counted
as interference free.

Study Date: 7/13/00

Stations which receive interference:

Call Letters	H Units	Population	Area (sq. km)
K29EB.C	6606	14191	169.17
KWCM-D.A	0	0	3.43

Totals for wdse hib31

Total population to which interference is caused: 14191

Total number of housing units to which interference is caused: 6606

	Housing Units	Population
Minnesota		
Itasca County		
K29EB.C	3	0
St. Louis County		
K29EB.C	6,603	14,191

[DRAFT NOTICE OF PROPOSED RULE MAKING, SUBMITTED
PURSUANT TO SECTION 1.401(d) OF THE COMMISSION'S RULES]

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of)	
)	
Amendment of Section 73.622(b),)	MM Docket No. RM
Table of Allotments, Digital)	
Television Broadcast Stations)	
(Hibbing, Minnesota))	

NOTICE OF PROPOSED RULE MAKING

Adopted:

Released:

Comment Date:

By the Chief, Video Services Division:

1. The Commission has before it a petition for rule making filed by Duluth-Superior Area Educational Television Corporation ("Petitioner"). Petitioner requests the addition of noncommercial educational digital television Channel 31 in Hibbing, Minnesota.

2. Petitioner asserts that Hibbing does not presently receive any noncommercial educational television service of a Grade B signal quality or better. The proposed addition of reserved Channel 31 to Hibbing would bring the first-ever public television service to Hibbing and surrounding areas. Petitioner also asserts that Channel 31 has superior transmission characteristics to Channel 51, which is allocated to Hibbing, and could achieve a comparable signal strength with one-half the power.

3. Petitioner has submitted engineering materials demonstrating that its proposal is in compliance with Sections 73.622(a) and 73.623(c) of the Rules, including

pertinent criteria for interference protection to NTSC and DTV services, including facilities eligible for Class A protection.

4. We believe that Petitioner's proposal warrants consideration because it complies with the criteria set forth in Sections 73.622(a) and 73.623(c) of the Rules. We therefore propose to modify Section 73.622(b) as requested by Petitioner.

5. Accordingly, we seek comments on the proposed amendment of the DTV Table of Allotments, Section 73.622(b) of the Commission's Rules, as set forth below for the listed community:

A.

<u>City</u>	<u>Proposed Additional Channel No.</u>
Hibbing, Minnesota	*31

The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

Interested parties may file comments on or before _____, and reply comments on or before _____, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, DC 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Theodore D. Frank
Arnold & Porter
555 12th Street, N.W.
Washington, DC 20004
(202) 942-5790

The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the TV Table of Allotments, Section 73.606(b) of the Commission's Rules. See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981. The Regulatory Flexibility Act of 1980 would also not apply to rule making proceedings to amend the DTV Table of Allotments, Section 73.622(b) of the Commission's Rules.

For further information concerning this proceeding, contact _____, Mass Media Bureau, (202) 418-1600. For purposes of this restricted notice and comment

rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment to which the reply is directed constitutes an ex parte presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Services Division
Mass Media Bureau

Attachment: Appendix

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the DTV Table of Allotments, Section 73.622(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off protection. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposals in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s)

who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Center (Room CY-A257) at its headquarters, 445 12th Street, SW, Washington, D.C.